The ethics of cloud storage

By Joshua H. Brand
Assistant Director, Minnesota Office of Lawyers Professional Responsibility

With the ever-increasing role that technology is playing in both our personal and professional lives, it is important to keep in mind how our ethical duties are continually evolving with the advancement and use of technology. One emerging area of relevance to attorneys is the use of cloud computing services and, in particular, cloud storage services. Distilled down to its most basic terms, cloud computing can be defined as the shared use of — and remote, universal access to — a third party's computer equipment, software or services.

Gone are the days when, if an attorney wanted to work on a client matter outside of the office, he or she had to physically take along the appropriate client file.

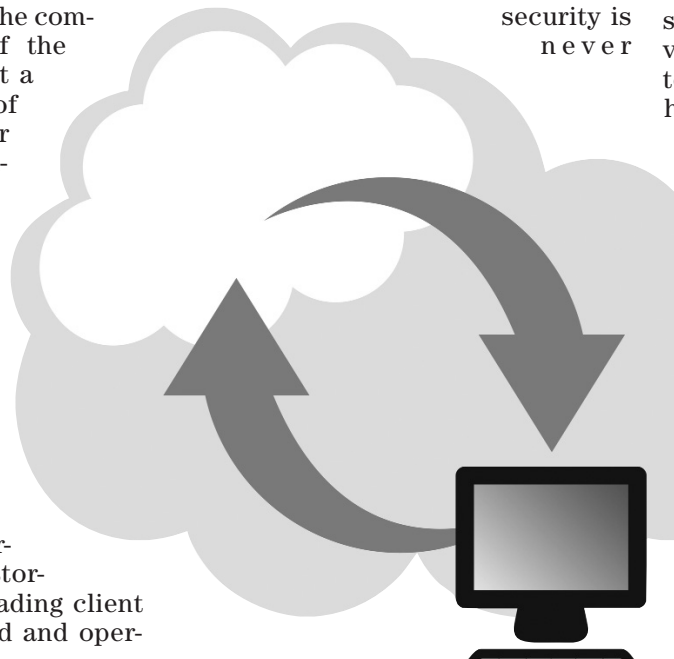
Now, with a computer and an Internet connection, an attorney is able to access client file information uploaded to third-party servers from halfway around the world. Cloud storage certainly has the potential to greatly enhance both the attorney-client relationship and attorney productivity. However, bear in mind that the use of technologies such as cloud storage will never decrease — and may, in fact, increase and make more complicated — an attorney's obligations under the Rules of Professional Conduct.

So what issues must an attorney consider, and what requirements might be imposed upon an attorney when using cloud computing for the storage of client file information?

As an initial matter, an attorney must have at least a base-level comprehension of the technology and the implications of its use. While no attorney is required to know precisely how cutting-edge technology truly works or be a computer genius, the competence requirements of the Rules necessitate at least a cursory understanding of any technology used if for no other reason than to enable an attorney to effectively communicate to a client the pros and cons of its use in the representation.

As the preservation of the confidentiality of client information is of paramount importance to the attorney-client relationship, an attorney must be aware of the potential risks inherent in the use of cloud storage services before uploading client data to third-party-owned and operated off-site servers.

Are such services secure? The short answer is the classic attorney response: It depends. No matter how good a third party's security system is, it is a near-guarantee that anyone with enough time, money and expertise can find a way to bypass it. That truism applies equally to an attorney's personal computer; however, the risk of a security breach of a cloud storage server is that a client's stored information can be accessed and/or destroyed in its entirety in moments. One relatively easy and initial step an attorney can take to increase the security of client information — be it stored on- or off-site — is to keep such information password-protected. While complete security is never achievable, a prudent attorney will employ reasonable precautions and thoroughly research a cloud storage vendor's security measures and track record before using the service.



Reasonable precautions may also require an attorney to read and understand a vendor's user and/or license agreement(s) before uploading client information to their servers. Does the vendor agreement address confidentiality? If not, is the vendor willing to sign a confidentiality agreement or otherwise bind its agents to your obligations of confidentiality to your clients? What happens to stored information in the event the vendor goes out of business or the attorney decides to terminate use of the service? If an attorney defaults on payments to a cloud storage vendor, will the attorney still be able to access and retrieve stored client information, or will the vendor revoke the attorney's access to the information and effectively hold the data hostage in lieu of payment? Are a vendor's servers located in countries with less-stringent legal protections against search and seizure? Even if the servers are located domestically, to what lengths will a vendor go to fight the subpoena of information maintained on its servers? The answers to all these questions and more need to be considered before an attorney's utilization of cloud storage services. Despite these potential issues, most states that have issued formal opinions concerning cloud storage have determined it is permitted with proper precautions.

In conclusion, the use of technologies such as cloud computing can be of great advantage to an attorney's law practice and is completely acceptable under the Rules of Professional Conduct provided an attorney first conducts the requisite due diligence necessary to safeguard the integrity of stored client information.

To improve your writing, revisit some basics

By Matthew R. Salzwedel

Good legal writing requires basic knowledge of language, grammar and usage; the opportunity to apply that knowledge logically and rhetorically; and, most importantly, repetition in myriad contexts. This week, we'll take a look at five simple tips to improve your legal writing, and various legal-writing authorities that support them. Next week, we'll look at five more.

Tip No. 1: Don't use *Enclosed please find*.

The introductions *Please find enclosed* and *Enclosed please find* are nonsensical. By sheer volume of use, they may be lawyers' most common legal-writing folly. As Bryan Garner explains, the phrase *Enclosed please find* "is universally condemned in books on writing — and it has always been condemned." (Bryan A. Garner, *Advanced Legal Writing & Editing* 17, 19 (2002 rev. ed.) ("The phrase [*Enclosed please find*] has no defenders — at least none who are willing to go on the record.")) If you are referring to a letter's contents — such as an attachment or enclosure — write instead *Attached is*, *Enclosed are* or the like. If you consider *Enclosed please find* a throwaway phrase, then why do you waste your valuable time perpetuating it?

Tip No. 2: Begin sentences with *And* or *But*, and avoid beginning sentences with *However*.

After elementary school, it is perfectly acceptable to begin sentences with the coordinating conjunctions *And* or *But*. (Wilson Follett, *Modern American Usage* 64 (1966) ("A prejudice lingers from the days of schoolmarmish rhetoric that a sentence should not begin with *and*. The supposed rule is without foundation in grammar, logic, or art.")) Indeed, one hallmark of good legal writing is the effective use of *And* or *But*. Avoid beginning sentences with *However*. Although beginning a sentence with *However* is not incorrect, it's not stylistically preferred because it results in ponderous, unemphatic sentences. If you still want to use the word *however*, however, set it off with commas in the middle of the sentence. (Bryan A. Garner, *Modern American Usage* 414 (2003 ed.)) Finally, as John Trimble advises, never insert a comma after *But* when beginning a sentence: "You want to quicken your prose with [*But*], and the comma w[ill] just kill any gain." (*Writing with Style* 79 (2d ed. 2000))

Tip No. 3: Hyphenate phrasal adjectives. Another common legal-writing mistake is the failure to hyphenate phrasal adjectives. A phrasal adjective occurs "[w]hen a phrase functions as an adjective preceding the noun it modifies." (Garner, *Modern American Usage*, at 604) So, for example, *work product doctrine* and *breach of fiduciary duty claim* should instead be written *work-product doctrine* and *breach-of-fiduciary-duty claim*. One main exception is when a phrasal adjective begins with an adverb ending in *ly*. So instead of writing *federally-mandated program* and *wholly-owned subsidiary*, write *federally mandated program* and *wholly owned subsidiary*.

Tip No. 4: Never use *prior to*. The late acclaimed author David Foster Wallace, in a YouTube interview, excoriated the use of "puff words" like *prior to*, *subsequent to* and *at this time*, and said that eliminating them from your writing would allow you to "become an agent of light and goodness instead of the evil that is all around." (*David Foster Wallace on "Prior To,"* YouTube (Sept. 18, 2009)) Foster was exaggerating, but *prior to* almost always should be stricken in favor of *before*. The same goes for *previous to* (before), *subsequent to* (after) and *at this time* (now). Using *before*, *after* and *now* will reduce your word count and make you sound less pretentious and stuffy. (Theodore M. Bernstein, *The Careful Writer* 347 (1965) (*As to* is "[a] faddish affectation for *before*. Would you say *posterior to* in place of *after*?"))

Tip No. 5: Never use *pursuant to*. Garner says it best when recommending that you eliminate *pursuant to* from your vocabulary: "This phrase — *pursuant to* — is dangerously addictive. You'll find it teeming in mediocre legal writing. And you'll search in vain for it in masterly legal writing. That probably says it all." (Bryan A. Garner, *The Winning Brief* 250 (2d ed. 2004)) Instead of *pursuant to*, write *according to*, *under* or *as required by*; all are better than *pursuant to*. (Bryan A. Garner, *The Elements of Legal Style* 136 (2d ed. 2002) ("These are ordinary English words and phrases; *pursuant to* is pure legalese."))

Matthew R. Salzwedel is an attorney at Lockridge Grindal Nauen P.L.L.P., and a former law clerk for the Honorable G. Barry Anderson on the Minnesota Court of Appeals.